No. 79-1380

In the Supreme Court of the United States

OCTOBER TERM, 1979

PATRICIA R. HARRIS, SECRETARY OF HEALTH AND HUMAN SERVICES, APPELLANT

v.

CHARLES EDWARD WILSON, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE APPELLANT

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QUESTION PRESENTED

Whether Section 1611(e)(1)(A)-(B) of the Social Security Act violates the Due Process Clause of the Fifth Amendment by excluding from eligibility for Supplemental Security Income public assistance benefits persons otherwise eligible who are residents of public institutions and whose treatment is not funded by the federal government under the Medicaid program.

* In addition to appellee Wilson, the following individuals were named as plaintiffs in the amended complaint (see J.A. 14, 15-16): Michael Irene Welch, Maudie Simmons, James Armstrong, Bomer Johnson, Samuel Birdsell, Donald Clark and John Kieran Turney. The district court also certified this case as a class action. See note 7, *infra*.

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OPINION BELOW

The opinion of the district court (J.S. App. 1a–20a) is reported at 478 F.Supp. 1046.

JURISDICTION

The order of the district court (J.S. App. 1a–20a) was entered on October 10, 1979. A notice of appeal was filed on November 8, 1979 (J.S. App. 24a–25a).[1] On December 28, 1979, Mr. Justice Stevens extended the time for docketing the appeal to and including March 7, 1980, and the jurisdictional statement was filed on that date. The Court noted probable jurisdiction on May 27, 1980. The jurisdiction of this Court rests on 28 U.S.C. 1252. *Williams* v. *Zbaraz,* No. 79–4 (June 30, 1980), slip op. 7–9.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the Constitution provides in pertinent part:

> No person shall * * * be deprived of life, liberty, or property, without due process of law * * *.

2. Section 1611 of the Social Security Act, 42 U.S.C. 1382, provides in pertinent part:

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[1] The judgment of the district court (J.S. App. 21a–23a) was entered on December 19, 1979, after the filing of the Secretary's notice of appeal from the district court's order. The filing of the notice of appeal was authorized by 28 U.S.C. 1252, which provides for direct appeal to this Court from "an interlocutory or final judgment, decree or *order* of any court of the United States * * * holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party" (emphasis added). Cf. Fed. R. App. P. 4(a)(2) ("* * * a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day thereof").

(a)(1) Each aged, blind, or disabled individual [who meets applicable income and resources requirements] shall be an eligible individual for purposes of this subchapter.

* * * * *

(e)(1)(A) Except as provided in subparagraph (B) and (C), no person shall be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if throughout such month he is an inmate of a public institution.

(B) In any case where an eligible individual or his eligible spouse (if any) is, throughout any month, in a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or spouse) under a State plan approved under subchapter XIX [the Medicaid provisions] of this chapter, the benefit under this subchapter for such individual for such month shall be payable—

(i) at a rate not in excess of $300 per year (reduced by the amount of any income not excluded pursuant to section 1382a(b) of this title) in the case of an individual who does not have an eligible spouse;

(ii) in the case of an individual who has an eligible spouse, if only one of them is in such a hospital, home or facility throughout such month, at a rate not in excess of the sum of—

(I) the rate of $300 per year (reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the one who is in such hospital, home, or facility), and

(II) the applicable rate specified in subsection (b)(1) of this section (reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the other); and

(iii) at a rate not in excess of $600 per year (reduced by the amount of any income not excluded pursuant to section 1382a(b) of this title) in the case of an individual who has an eligible spouse, if both of them are in such a hospital, home, or facility throughout such month.

3. Section 1905 of the Act, 42 U.S.C. 1396d, provides in pertinent part:

For purposes of this subchapter—

(a) The term "medical assistance" means payment of part or all of the cost of the following care and services * * *

* * * * *

(1) inpatient hospital services (other than services in an institution for tuberculosis or mental diseases); * * *

(4)(A) skilled nursing facility services (other than services in an institution for tuberculosis or mental diseases) for individuals 21 years of age or older * * *;

* * * * *

(14) inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals 65 years of age or over in an institution for tuberculosis or mental diseases;

(15) intermediate care facility services (other than such services in an institution for tuberculosis or mental diseases) for individuals who are

determined, in accordance with section 1396a(a)(31)(A) of this title, to be in need of such care;

(16) effective January 1, 1973, inpatient psychiatric hospital services for individuals under age 21, as defined in subsection (h) of this section; and

(17) any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary;

except as otherwise provided in paragraph (16), such term does not include—

(A) any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

STATEMENT

1. In 1965, Congress enacted Title XIX of the Social Security Act, 42 U.S.C. 1396 *et seq.*, which established a medical assistance program, commonly known as "Medicaid," under which the federal government provides financial assistance to states that choose to reimburse certain costs of medical treatment for needy persons. See *Harris* v. *McRae,* No. 79–1268 (June 30, 1980), slip op. 1–2; *Beal* v. *Doe,* 432 U.S. 438, 440–441 (1977). Although participation in the Medicaid program is entirely optional, once a state elects to participate, it must comply with the requirements of Title XIX. One such requirement is that a participating state must provide financial assistance for the treatment of "categorically needy" [2] individuals

with respect to five general areas of medical care: (1) inpatient hospital services; (2, outpatient hospital services; (3) other laboratory and X–ray services; (4) skilled nursing home services, periodic screening and diagnosis of children, and family planning services; and (5) physicians' services. 42 U.S.C. 1396a (a)(13)(B), 1396d(a)(1)–(5).

The Medicaid program thus generally provides for coverage of inpatient and outpatient treatment for both physical and mental illnesses. Title XIX, however, specifically excludes from coverage under Medicaid the cost of services provided to individuals between the ages of 21 and 64 in an institution for treatment of tuberculosis or mental diseases. 42 U.S.C. 1396d(a)(1), (4)(A), (14), (15), (16), (17)(B).[3]

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[2] The Medicaid program identifies two groups of needy persons. The "categorically needy" include families with dependent children who are receiving public assistance under the Aid to Families with Dependent Children Program, 42 U.S.C. 601 *et seq.*, and the aged, blind and disabled who are receiving benefits under the Supplemental Security Income (SSI) program, 42 U.S.C. 1381 *et seq.* See 42 U.S.C. 1396a(a)(10)(A). The "medically needy" include persons who would be eligible for AFDC or SSI payments if they did not have income or resources in excess of the statutory standards and who have insufficient income and resources to pay for necessary medical care. See 42 U.S.C. 1396a(a)(10)(C). Participating states are not required to extend Medicaid coverage to the medically needy. If a state elects to include the medically needy in its Medicaid plan, it has the option of providing somewhat different coverage from that required for the categorically needy. See 42 U.S.C. 1396a(a)(13)(C). See *Harris* v. *McRae*, *supra*, slip op. 2 n.1; *Beal* v. *Doe*, *supra*, 432 U.S. at 440–441 n.1.

[3] As originally enacted, Title XIX excluded from Medicaid coverage services provided to all persons under 65 years of age in an institution for tuberculosis or mental diseases. In 1972, however, Congress amended Title XIX to extend coverage to persons under age 21 who are inpatients in an accredited psychiatric hospital receiving active treatment that has been certified as necessary and reasonably likely to improve the patient's condition. See 42 U.S.C. 1396d(a)(16), (h).

Title XVI of the Social Security Act, 42 U.S.C. 1381 *et seq.*, which became effective on Jan. 1, 1974, established the Supplemental Security Income (SSI) program, which provides monthly federal cash assistance to needy aged, blind and disabled persons. Title XVI replaced several cooperative federal-state financial aid programs with a single, uniform system of welfare benefits administered by the Social Security Administration of the Department of Health and Human Services (formerly the Department of Health, Education, and Welfare). See *Califano* v. *Aznavorian*, 439 U.S. 170, 171 (1978); *Califano* v. *Torres*, 435 U.S. 1, 2 (1978). In order to be eligible for SSI benefits, an individual must be a resident of the United States, satisfy certain income and resource standards, and be at least 65 years old or meet statutory definitions of blindness or disability. See 42 U.S.C. 1382a, 1382b, 1382c(a). Under the statute, a person is considered disabled "if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment * * *." 42 U.S.C. 1382c(3)(A).

Section 1611(e)(1)(A) of the Act, 42 U.S.C. 1382(e)(1)(A), provides that no person shall be eligible for SSI benefits in any month "if throughout such month he is an inmate of a public institution." [4] The statute, however, contains a limited

[4] The Secretary has defined "institution" as "an establishment which furnishes * * * food and shelter to four or more persons unrelated to the proprietor and, in addition, provides some treatment or services which meet some need beyond the basic provision of food and shelter." 20 C.F.R. 416.231(b)(1). A "public institution" is one that is either the responsibility of, or administered by, a governmental unit. 20 C.F.R. 416.231(b)(2). An "inmate" of a public institution is an individual "who is living in a public institution and receiving treatment and/or services which are ap-

exception to this blanket exclusion. An otherwise eligible inmate in a public health care institution may receive SSI benefits of up to $25 per month if the institution is receiving Medicaid payments on the inmate's account under an approved state plan. 42 U.S.C. 1382(e)(1)(B). The effect of the statute is to deny SSI payments to all residents of public institutions whose care, for whatever reason, is not funded under Medicaid. Because of their exclusion from coverage under the Medicaid program, persons between 21 and 64 years of age in public mental institutions are not eligible to receive SSI benefits.

2. Appellees are indigent residents of the United States between the ages of 21 and 64 who are disabled due to mental impairment. They thus satisfy the general eligibility requirements under the SSI program. As a result of their hospitalization in public mental institutions, however, appellees, by operation of Section 1611(e)(1)(A)–(B) of the Act, are not entitled to receive SSI benefits. Appellees do not receive full SSI benefits because they are inmates of a public institution, and they do not receive the reduced $25 monthly SSI payment because their treatment for mental illness is not being paid for under the Medicaid program.[5]

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propriate to the person's requirements." 20 C.F.R. 416.231(b)(3). See *Baur* v. *Mathews*, 578 F.2d 228, 232 (9th Cir. 1978).

In 1976, Congress amended Section 1611(e) to provide that the term "public institution" does not include a publicly operated community residence serving no more than 16 residents. 42 U.S.C. 1382(e)(1)(C). See 20 C.F.R. 416.231(b)(6).

[5] Two of the appellees, Simmons and Turney, received benefits under the SSI program until their admission to public mental institutions, at which point their benefits terminated (J.A. 15, 16). The remaining named appellees were admitted to public mental hospitals prior to the effective date of SSI.

Appellees filed this class action in the United States District Court for the Northern District of Illinois, challenging the constitutionality of Section 1611(e)(1)(A)–(B) of the Act on the ground that their exclusion from the $25 monthly SSI benefit violates the equal protection component of the Due Process Clause of the Fifth Amendment (J.A. 14–25).[6] The district court certified the case as a class action (J.S. App. 21a)[7] and granted appellees' motion for summary judgment, holding that Section 1611(e)(1)(A)–

[6] In their complaint, appellees sought declaratory, monetary, and injunctive relief against both the federal government and the State of Illinois, claiming that, in addition to Section 1611(e), various other state and federal statutory provisions concerning aid to the aged, blind and disabled that had been in effect prior to the effective date of SSI were unconstitutional (J.A. 14–25). A three-judge district court denied class certification and dismissed appellees' claims against the Secretary for lack of jurisdiction on the ground that appellees had failed to exhaust their administrative remedies. The claim against the State was denied on substantive grounds. On appeal, the court of appeals held that the Secretary had waived the exhaustion requirement and that the district court had jurisdiction over appellees' claims against the federal government under 42 U.S.C. 1383(c)(3). It therefore remanded for consideration of appellees' motion for class certification and their claim for declaratory relief. *Wilson* v. *Edelman*, 542 F.2d 1260, 1269–1275 (7th Cir. 1976). The appeal from the order of the district court sustaining the constitutionality of the Illinois statute was dismissed for lack of jurisdiction. *Id.* at 1275–1282.

[7] The class was defined as (J.S. App. 21a):

> all persons residing in HEW Region V who have been terminated from benefits under Title XVI, or who have applied for Supplemental Security Income benefits under Title XVI and have been denied such benefits, on or after January 1, 1974, solely because they are between the ages of 21 and 65 and hospitalized in a public mental institution.

HEW Region V includes the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.

(B) of the Act is unconstitutional insofar as it excludes appellees from receiving SSI benefits solely because of their status as inmates of public mental health institutions (J.S. App. 1a–20a).

The district court first determined that Section 1611(e)(1), read in conjunction with the provisions of Title XIX that it incorporates by reference, excludes certain otherwise eligible persons from the $25 per month SSI payment on the basis of three factors: "(1) age and (2) residence in a public, (3) mental health hospital" (J.S. App. 6a). As to the first two factors, age and residence in a public institution, the court ruled that the statutory classification has a rational basis and is therefore constitutional (*id.* at 7a–8a). The court concluded, however, that the third factor—residence in a mental hospital—amounts to a classification on the basis of mental health (*id.* at 8a). It then found that mental health classifications are sufficiently like classifications based on race and national origin to require a higher standard of judicial scrutiny than is normally applicable in reviewing social welfare legislation (*id.* at 9a–15a). In particular, the court ruled that mental health classifications "must serve important governmental interests and must be substantially related to achievement of those objectives" (*id.* at 17a, quoting *Califano* v. *Webster*, 430 U.S. 313, 316–317 (1977)).

Applying this standard to the classification in the present statute, the court held that the governmental interests served by the classification "are not of sufficient importance to sustain the exclusion of" members of appellees' class (J.S. App. 17a). The court rejected the argument that the statute is a proper limitation on federal expenditures, concluding that "government may not limit[] its expenditures by making invidious distinctions between classes of its citi-

zens" (*id.* at 16a). Moreover, the court found "similarly unconvincing" the other reasons advanced in support of Section 1611(e)'s incorporation of the Medicaid scheme to determine eligibility for SSI payments (J.S. App. 16a–17a):

> The Medicaid statute provides payments to institutions to meet the subsistence needs of eligible individuals. The SSI statute provides supplemental income to the residents of Medicaid-eligible public institutions so that they may purchase personal items. Aged, blind, and disabled residents of public mental health hospitals are equally in need of this monthly stipend—the source of their subsistence payment bears no relation to their need for supplementary income.

Finally, the court observed that "[t]he exclusion appears to have been an accidental byproduct of the legislative scheme rather than an intended means of achieving a calculated legislative objective" (*id.* at 17a).

SUMMARY OF ARGUMENT

The district court held Section 1611(e) of the Social Security Act unconstitutional because it concluded that the statute invidiously discriminates against the mentally ill, that classifications based on mental illness are sufficiently similar to "suspect" classifications such as race and national origin to require heightened judicial scrutiny, and that the statute failed to pass muster under this heightened standard. The decision below is incorrect because its basic premise is flawed: the statute does not create a classification based on mental health.

1. It is difficult, if not impossible, to reconcile the district court's conclusion that the statute discriminates against the mentally ill with the fact that appellees and other individuals who are mentally disabled are eligible for SSI benefits

in the first instance *because* of their mental conditions. Appellees are excluded from SSI benefits by virtue of the incorporation of the Medicaid eligibility provisions into Section 1611(e). But neither the Medicaid statute nor Section 1611(e) classifies on the basis of mental health. So long as they are otherwise eligible, numerous categories of mentally disabled persons are covered under Medicaid and therefore qualify for SSI payments under Section 1611(e). Conversely, large numbers of otherwise eligible persons in public institutions are not covered by Medicaid and are thus denied SSI benefits for reasons wholly unrelated to their mental health status. Both Section 1611(e) and the Medicaid statute are facially neutral with respect to mental health, and there is no evidence that Congress was motivated by a feeling of antipathy toward the mentally ill when it created the statutory classification.

The classification by which appellees are ineligible for SSI benefits under Section 1611(e) is predicated not on mental health but on age and residence in a public mental institution. Neither factor defines a class that is deserving of strict or "middle-tier" scrutiny for purposes of equal protection analysis.

It is settled that a classification based on age is valid if it has some rational relationship to a legitimate governmental interest. See *Vance* v. *Bradley*, 440 U.S. 93 (1979); *Massachusetts Bd. of Retirement* v. *Murgia*, 427 U.S. 307 (1976). Moreover, a classification based on residence in a public mental institution need not satisfy a heightened standard of review. Appellees' presence in mental hospitals, unlike race or national origin, is not an immutable characteristic determined solely by accident of birth. And, while it may well be that members of appellees' class have limited political influence as the result of the disenfranchisement of

most mental institution residents, that disenfranchisement, as appellees concede, is based not on societal prejudice but on factors directly related to their ability to participate in and contribute to society. In addition, concerned individuals or organized interest groups often step forward to protect the interests of mental institution residents.

In order to pass muster on equal protection grounds, therefore, the classification enacted in Section 1611(e) need only be shown to have some rational basis.

2. Section 1611(e) satisfies the rational basis test. The statutory classification is rationally related to the legitimate goal of conserving federal resources by providing a small personal needs allowance only to those public institution residents for whom the federal government has already undertaken partial financial responsibility, while leaving to the states and local governments the responsibility of providing for the needs of other public institution residents whose care and treatment are being fully assumed by those governmental units.

Appellees do not directly challenge the congressional decision generally to exclude public institution inmates from the SSI program, nor do they contest the decision to provide a $25 monthly SSI allowance to public institution residents whose treatment is covered by Medicaid. Appellees also do not argue that Congress improperly excluded from coverage under Medicaid the treatment of persons between 21 and 64 years of age in mental institutions. Rather, appellees' contention is simply that it is somehow unfair to deny them SSI benefits on the ground that their institutionalized treatment is not funded under Medicaid. But this contention is equally available to *any* otherwise eligible resident of a public institution who is denied SSI payments because he is not entitled to Medicaid benefits.

The Due Process Clause, however, does not prohibit Congress from choosing to extend SSI benefits to institutionalized inmates "one step at a time" (*Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489 (1955)) and from "concentrat[ing] limited funds where the need is likely to be greatest." *Califano* v. *Boles*, 443 U.S. 282, 296 (1979). Here, Congress determined to provide a personal needs allowance under SSI only to those public institution residents whose institutional expenses are already being assumed by the federal government under the Medicaid program. General rules of this sort are rational "even though such rules inevitably produce seemingly arbitrary consequences in some individual cases." *Califano* v. *Jobst*, 434 U.S. 47, 53 (1977).

3. A central theme underlying appellees' arguments and the district court's opinion is that the statute may have been "an accidental byproduct of the legislative scheme rather than an intended means of achieving a calculated legislative objective" (J.S. App. 17a). The legislative record, however, clearly demonstrates that Congress knew what it was doing when it enacted Section 1611(e).

The committee reports of both Houses of Congress specifically state that SSI benefits would be provided only to people "who are residents of *certain* public institutions, or hospitals or nursing homes *which are getting Medicaid funds* * * *." S. Rep. No. 92–1230, 92 Cong., 2d Sess. 386 (1972); H.R. Rep. No. 92–231, 92 Cong., 1st Sess. 150 (1971) (emphasis added). The clear implication is that residents of certain other public facilities that are not receiving Medicaid funds would not qualify for SSI benefits. Moreover, as part of the same bill that created the SSI program Congress amended Title XIX of the Act to extend Medicaid coverage to persons under 21 years of age, but rejected an amendment to establish demonstration projects for the purpose of determining the feasibility of extending Medicaid coverage to persons

between the ages of 21 and 64 in mental hospitals. During the hearings on the amendments to the Social Security Act, several witnesses specifically pointed out that proposed Section 1611(e) would deny SSI payments to residents of public mental institutions.

In sum, "Congress was aware of what it was doing" when it incorporated the Medicaid eligibility provisions into Section 1611(e), and "the legislative history does not demonstrate that the plain language was not intended." *Maine* v. *Thiboutot*, No. 79–838 (June 25, 1980), slip op. 6. In any event, even if appellees are correct that Congress did not intend to exclude their class from the benefits of the statute, the proper remedy would be with Congress and not the courts.

ARGUMENT

SECTION 1611(e) OF THE SOCIAL SECURITY ACT, WHICH EXCLUDES RESIDENTS OF PUBLIC MENTAL INSTITUTIONS WHOSE CARE IS NOT FUNDED UNDER MEDICAID FROM ELIGIBILITY FOR SSI PUBLIC ASSISTANCE BENEFITS, DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

A. INTRODUCTION

The equal protection issue in this case arises from the interaction of two complex statutory schemes, but the focus of appellees' constitutional challenge is quite narrow. Section 1611(e)(1)(A) of the Social Security Act provides that inmates of public institutions are ineligible for SSI benefits. The district court upheld, and appellees do not contest, the constitutionality of this blanket exclusion from the SSI program. As the court below correctly observed (J.S. App. 8a), "Congress could well conclude that public institution inmates are receiving all of the funds from the public treasury to which they are entitled."

In Section 1611(e)(1)(B) of the Act, however, Congress sought to temper this exclusion by providing that otherwise eligible residents of public medical institutions are entitled to an SSI allowance not exceeding $25 per month if the institutions are receiving Medicaid payments on their behalf. The report of the Senate Committee explained the scope and purpose of this provision:

> People who are residents in certain public institutions, or hospitals or nursing homes which are getting Medicaid funds, would get benefits of up to $25 a month (reduced by nonexcluded income). For these people most subsistence needs are met by the institution and full benefits are not needed. Some payment to these people, though, would be needed to enable them to purchase small comfort items not supplied by the institution. No supplemental security benefits will be paid to an individual in a penal institution.

S. Rep. No. 92–1230, 92d Cong., 2d Sess. 386 (1972). See H.R. Rep. No. 92–231, 92d Cong., 1st Sess. 150 (1971).[8] Thus, Section 1611(e)(1)(B) provides a modest monthly allowance to institutionalized Medicaid recipients, for whom the federal government has already assumed substantial financial responsibility, to enable them to purchase items not covered by the Medicaid program. Appellees are not entitled to receive

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[8] In connection with a proposed amendment to the SSI statute, the House Ways and Means Committee recently described in similar fashion the nature of the provision at issue here:

> Under existing law when an individual enters a hospital or other medical institution in which a major part of the bill is paid by the medicaid program his monthly SSI benefit is reduced to $25 * * *. This amount is intended to take care of small personal expenses, with the cost of maintenance and medical care being provided through other programs.

H.R. Rep. No. 96–451 (Pt. 1), 96th Cong., 1st Sess. 153 (1979).

the monthly $25 SSI payment because, as patients between the ages of 21 and 64 in mental hospitals, they are excluded from coverage under the Medicaid program.

In holding that Section 1611(e)(1)(A)–(B) denies appellees the equal protection of the laws, the district court did not question the constitutionality of the provisions in the Medicaid statute generally excluding federal funding for the costs of inpatient treatment for individuals in public and private mental hospitals. The constitutionality of the Medicaid eligibility provisions was upheld by this Court in its summary affirmance in *Legion* v. *Richardson*, 354 F. Supp. 456 (S.D.N.Y.), aff'd *sub nom. Legion* v. *Weinberger*, 414 U.S. 1058 (1973),[9] and we do not understand appellees to challenge the result in that case (see pages 28–30, *infra*).[10]

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[9] See *Harris* v. *McRae*, *supra*, slip op. 26 n.28; *id.* at 7 n.5 (Marshall, J., dissenting); *id.* at 7 n.8 (Stevens, J., dissenting). See also *Woe* v. *Mathews*, 408 F. Supp. 419 (E.D.N.Y. 1976), aff'd, 562 F.2d 40 (2d Cir. 1977), cert. denied, 434 U.S. 1048 (1978); *Kantrowitz* v. *Weinberger*, 388 F. Supp. 1127 (D.D.C. 1974), aff'd, 530 F.2d 1034 (D.C. Cir.), cert. denied, 429 U.S. 819 (1976).

[10] Nor did the district court question the distinction drawn in the SSI statute between eligible individuals in public institutions whose treatment is funded under Medicaid and who thus receive the $25 monthly allowance, and residents of private institutions not receiving Medicaid funds on their behalf, who receive the full SSI payment. Full benefits are made available to the latter group because most of their subsistence needs are not met by the private institution. See S. Rep. No. 92–1230, *supra*, at 386; H.R. Rep. No. 92–231, *supra*, at 150. On the other hand, eligible SSI recipients in private medical facilities whose treatment is funded under the Medicaid program only receive the $25 monthly SSI payment, rather than full SSI benefits, on the theory that, like public institution residents who are covered under Medicaid, their basic living expenses (that the SSI payment was intended to cover) are being met by the expenditure of public funds. See 42 U.S.C. 1382(e)(1)(B); Staff of Senate Comm. on Finance, 95th Cong., 1st Sess., *The Supplemental Security Income Program* 66–67, 109–110 (Comm. Print 1977).

The sole question presented is whether it was constitutionally permissible for Congress to incorporate the same distinction upheld in *Legion* when it enacted the SSI program—that is, to refuse to provide any SSI benefits to public institution residents (such as appellees) whose treatment is not funded through the Medicaid program.

The standard for assessing equal protection claims of this sort is a familiar one. As this Court recently stated in *Harris* v. *McRae, supra,* slip op. 22–23 (footnote and citations omitted):

> The guarantee of equal protection under the Fifth Amendment is not a source of substantive rights or liberties, but rather a right to be free from invidious discrimination in statutory classifications and other governmental activity. It is well-settled that where a statutory classification does not itself impinge on a right or liberty protected by the Constitution, the validity of classification must be sustained unless "the classification rests on grounds wholly irrelevant to the achievement of [any legitimate governmental] objective."

Laws providing for governmental payments of monetary benefits are "entitled to a strong presumption of constitutionality." *Mathews* v. *De Castro,* 429 U.S. 181, 185 (1976). Moreover, in enacting legislation providing for payment of public assistance benefits, "a government does not deny equal protection 'merely because the classifications made by its laws are imperfect. If the classification has some reasonable basis, it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality.' " *Ibid.,* quoting from *Dandridge* v. *Williams,* 397 U.S. 471, 485 (1970). See, *e.g., Califano* v. *Boles,* 443 U.S. 282, 284–285 (1979), *Personnel Adm'r of Massachusetts* v. *Feeney,*

442 U.S. 256, 271–272 (1979); *Califano* v. *Aznavorian*, 439 U.S. 170, 174–175 (1978); *Weinberger* v *Salfi*, 422 U.S. 749, 768–770 (1975).

The district court correctly determined (J.S. App. 6a n.3) that the statutory classification contained in Section 1611(e) does not abridge any fundamental right. See, *e.g.*, *Harris* v. *McRae*, *supra*, slip op. 12–19; *Maher* v. *Roe*, 432 U.S. 464, 471–477 (1977); *Massachusetts Bd. of Retirement* v. *Murgia*, 427 U.S. 307, 313 (1976). The court concluded, however, that the statute invidiously discriminates on the basis of mental health, that mental health classifications are "quasi-suspect" and must be scrutinized under a heightened standard of review, and that the statute did not pass muster under this heightened standard. So far as we are aware, no other federal court has held that statutory classifications based on mental health are subject to a level of scrutiny higher than the "rational basis" test.[11] The question whether mental health

[11] The district court accurately noted (J.S. App. 13a) that two courts have refused to apply a heightened standard of review in examining mental health classifications. *New York State Ass'n for Retarded Children* v. *Rockefeller*, 357 F. Supp. 752, 762 (E.D.N.Y. 1973); *Doe* v. *Colautti*, 454 F. Supp. 621, 632 (E.D.Pa. 1978), aff'd, 592 F.2d 704 (3d Cir. 1979). However, the court below erroneously cited two other district court decisions (*Frederick L.* v. *Thomas*, 408 F. Supp. 832, 836 (E.D. Pa. 1976); *Fialkowski* v. *Shapp*, 405 F. Supp. 946, 958–959 (E.D. Pa. 1975)) as authority for application of so-called "middle-tier scrutiny" (J.S. App. 14a) with regard to mental health classifications. In both of the latter cases the discussion of the appropriate level of review was dictum. Both cases involved decisions on motions to dismiss, and the opinions did no more than permit the plaintiffs to attempt to prove their case. Moreover, both cases concerned deprivation of educational benefits, and the courts appeared to view the statutes at issue as possibly abridging a fundamental interest. But cf. *San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 35–39 (1973).

classifications must be viewed under this stricter standard is an important one that may some day require resolution by this Court. But the Court need not address the question in this case because, as we now demonstrate, Section 1611(e) does not discriminate against the mentally ill.

B. SECTION 1611(e) IS NOT PREDICATED ON A CONSTITUTIONALLY SUSPECT CLASSIFICATION

1. The SSI Program Does Not Classify Benefit Recipients On The Basis of Mental Health

The SSI program was enacted to provide public assistance payments to indigent individuals who are aged, blind or disabled. The statutory definition of the term disability includes those who are "unable to engage in any substantial gainful activity by reason of any medically determinable physical or *mental* impairment." 42 U.S.C. 1382c(3)(A) (emphasis added).[12] Individuals such as appellees who are mentally impaired may be found disabled and, as a result of such disability, are eligible for benefits under the SSI program. Appellees specifically acknowledged in their complaint (J.A. 17, 23–24) that they are disabled because of their mental conditions and that they would be entitled to receive full SSI benefits but for the fact that they are residing in public mental health institutions. The district court's conclusion that the statute discriminates against a class of mentally ill people thus ignores the fact that appellees are entitled to receive SSI payments in the first instance solely *because* of their mental illness.

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[12] A physical or mental impairment is defined as "an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." 42 U.S.C. 1382c(3)(C). An individual's description of his symptoms without more is insufficient to establish the existence of a physical or mental impairment. See 20 C.F.R. 416.902(c).

Appellees argue (Motion to Affirm 8), however, that Section 1611(e) "creates the SSI exclusion by incorporating for public medical institution patients an institutional Medicaid eligibility classification *based on mental health*" (emphasis added). There is some surface plausibility to this contention, since appellees would be entitled to SSI benefits if they were not hospitalized in a public mental institution, and they would not be institutionalized if they did not require inpatient care for their mental conditions.[13] Nevertheless, careful scrutiny of the statutory scheme compels the conclusion that the distinctions drawn in Section 1611(e) and in the Medicaid statute that it incorporates are based not on mental health but rather on the patient's age and the type of public institution in which he is receiving treatment.

So long as they otherwise meet eligibility requirements, numerous categories of mentally disabled persons receive payments under the SSI program. Appellees, for example, would be receiving full SSI benefits if they were not institutionalized or if they were residing in a private mental hospital.[14] Furthermore, if appellees were inpatients in a public general health care institution (either a hospital, skilled nursing home or intermediate care facility) that was receiving Medicaid funds to pay for the costs of treating

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[13] Of course, if appellees did not require some professional care for their mental conditions, they also presumably would not be disabled within the meaning of 42 U.S.C. 1382c(3)(A) and hence would not be entitled to SSI benefits in the first place. Much of the appeal of appellees' arguments evaporates when it is realized that the arguments rest largely on this tautology.

[14] In the latter situation, appellees would not be subject to the general public institution inmate exclusion in Section 1611(e)(1)(A). Nor would their SSI payments be limited to $25 per month under Section 1611(e)(1)(B) because their treatment would not be covered under Medicaid.

appellees' mental illness, they would be entitled to the monthly $25 SSI allowance. Similarly, if appellees remained in public mental hospitals and were either under 21 years of age or at least 65 years old, they would also be eligible for the $25 SSI payment.

Conversely, under Section 1611(e) numerous categories of otherwise eligible individuals in public institutions whose treatment is excluded from coverage under Medicaid do not receive SSI payments for reasons wholly unrelated to their mental health status. These groups include residents of public institutions in states that have chosen not to participate in the Medicaid program; residents of a public institution that is not a medical institution [15] (*e.g.*, a publicly owned personal care home or halfway house; see 42 U.S.C. 1396d(a)(17)(A)); residents under the age of 65 in public institutions for treatment of tuberculosis (see 42 U.S.C. 1396d(a)(1), (4)(A), (14), (15), (17)(B)); residents of public intermediate care facilities in states whose Medicaid plans do not provide coverage for treatment in such facilities (see 42 U.S.C. 1396a(a)(13)(B), (C)); residents of public facilities that are either unlicensed because they do not meet state standards or are licensed but not certified by the state as a provider (see 42 U.S.C. 1396a(a)(9)(A), (22)(B), (33); cf. *O'Bannon* v. *Town Court Nursing Center*, No. 78–1318 (June 23, 1980), slip op. 2; *Koe* v. *Califano*, 573 F. 2d 761 (2d Cir. 1978)); and persons who have been inpatients in public facilities for more than 21 days in states whose Medicaid plans have 21-day limits on coverage of inpatient care (see *Virginia Hospital Ass'n* v. *Kenley*, 427 F. Supp. 781 (E.D. Va. 1977)).

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[15] If such a facility has fewer than 16 residents, it is not considered a "public institution" for purposes of Section 1611(e), and its residents, if otherwise eligible, would receive full SSI benefits. See 42 U.S.C. 1382(e)(1)(C).

Thus, although appellees are excluded from SSI benefits by virtue of the incorporation of the Medicaid eligibility scheme into Section 1611(e), it is inaccurate to characterize the statutory classification as being based on mental health. There are large numbers of other institutionalized individuals not covered by Medicaid who are similarly excluded from SSI benefits without regard to their mental conditions. By the same token, there are large numbers of mentally disabled persons who are entitled to receive full SSI benefits or (because they are institutionalized but their institutionalization is covered by Medicaid) reduced SSI benefits. Section 1611(e) treats mentally ill patients between the ages of 21 and 64 in public mental institutions in the same way that it treats mentally healthy patients in other public institutions whose treatment is not funded through Medicaid. Both are ineligible for payments under the SSI program. Moreover, the costs of appellees' treatment are not paid for under the Medicaid program for entirely legitimate reasons (see pages 28–30, *infra*) that were sustained by this Court in *Legion* and that appellees do not challenge here (see Motion to Affirm 10–11).

Section 1611(e) and the Medicaid eligibility scheme that it incorporates are facially neutral as to the mental health of benefit recipients. "The equal protection component of the Fifth Amendment prohibits only purposeful discrimination * * *, and when a facially neutral federal statute is challenged on equal protection grounds, it is incumbent upon the challenger to prove that Congress 'selected or reaffirmed a particular course of action at least in part "because of," not merely "in spite of," its adverse consequences on an identifiable group.'" *Harris* v. *McRae, supra,* slip op. 24 n.26, quoting from *Personnel Adm'r of Massachusetts* v. *Feeney, supra,* 442 U.S. at 279. There is absolutely no evidence to support a finding that Congress created the statutory classification because of antipathy toward the mentally ill or a purposeful desire to discriminate against them. See *New*

York Transit Authority v. *Beazer*, 440 U.S. 568, 592–593 & n.40 (1979). Compare, *e.g.*, *U.S. Dep't of Agriculture* v. *Moreno*, 413 U.S. 528 (1973).[16] Hence, the district court erred in applying a heightened standard of review based on its mistaken premise that the statute discriminates against the mentally ill.

2. Neither Age Nor Residence in a Public Mental Institution Is A Suspect Criterion For Purposes of Equal Protection Analysis

Although Section 1611(e) (when read together with certain provisions of the Medicaid eligibility scheme) does not draw distinctions based on an individual's mental health, it does create a classification predicated on two other factors: age and residence in a public mental institution. Neither factor defines a class that is suspect or "quasi-suspect" for purposes of equal protection analysis.

In *San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 28 (1973), this Court observed that a suspect class is one

> saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.

To the extent that Section 1611(e) discriminates on the basis of age, the district court correctly held (J.S. App. 7a) that such a classification is valid if there is "a rational relationship between the classification and a legitimate state interest." See *Vance* v. *Bradley*, 440 U.S. 93, 97 (1979); *Massachusetts Bd. of Retirement* v. *Murgia*, *supra*, 427 U.S. at 312. Persons between the ages of 21 and 64 clearly are

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[16] Indeed, appellees' claim of invidious discrimination is inconsistent both with the statutory definition of disability as including a mental impairment (42 U.S.C. 1382c(3)(A)) and with their assertion that the statutory classification was the product of legislative inadvertence. As we show below (pages 32–35, *infra*), this latter assertion is also without foundation.

not a "discrete and insular" group (*United States* v. *Carolene Products Co.*, 304 U.S. 144, 152–153 n.4 (1938)) in need of "extraordinary protection from the majoritarian political process." *San Antonio School District* v. *Rodriguez*, *supra*, 411 U.S. at 28. See *Massachusetts Bd. of Retirement* v. *Murgia*, *supra*, 427 U.S. at 313. Once the members of appellees' class reach 65 years of age they will be entitled to SSI benefits even if they are at that time residing in public mental institutions.

Nor do residents of public mental institutions comprise a class warranting strict or "middle-tier" (J.S. App. 13a) judicial scrutiny. The distinguishing feature of classification based on race and national origin, the so-called "suspect" groups, is that members of such groups are identifiable by certain immutable characteristics, determined solely by accident of birth, that bear "no relation to the individual's ability to participate in and contribute to society." *Mathews* v. *Lucas*, 427 U.S. 495, 505 (1976). See also *Frontiero* v. *Richardson*, 411 U.S. 677, 686 (1973) (plurality opinion). Appellees' presence in public mental hospitals, rather than in private mental hospitals or general health care facilities, is certainly not a permanent condition determined by accident of birth.[17] Indeed, members of appel-

[17] Nor is appellees' residence in public mental institutions necessarily "a factor over which they have no control" (J. S. App. 13a). Several of the appellees were voluntarily admitted to such institutions (J. A. 17), and the remaining appellees have not challenged the procedures that led to their involuntary institutionalization. Cf. *Vitek* v. *Jones*, No. 78–1155 (Mar. 25, 1980); *Parham* v. *J. R.*, 442 U.S. 584 (1979); *Addington* v. *Texas*, 441 U.S. 418 (1979). Insofar as appellees' presence in a public mental institution is the result of their indigency, this Court has repeatedly rejected the notion that "financial need alone identifies a suspect class for purposes of equal protection analysis." *Maher* v. *Roe*, *supra*, 432 U.S. at 471. See *Harris* v. *McRae*, *supra*, slip op. 23–24; *San Antonio School District* v. *Rodriguez*, *supra*, 411 U.S. at 29.

lees' class have been hospitalized in order to obtain treatment for their mental conditions; once they are deemed sufficiently rehabilitated, they will be discharged and may qualify for SSI benefits assuming that they remain otherwise eligible (*e.g.*, assuming that they are still disabled by reason of mental impairment).[18]

Appellees assert (Motion to Affirm 22) that "[v]irtually all states disenfranchise the 'insane'" and that therefore psychiatric inpatients have limited political influence. But as appellees themselves concede (Motion to Affirm 23), the disenfranchisement of most mental institution residents is based not on "stereotyped characteristics not truly indicative of their abilities" (*Massachusetts Bd. of Retirement* v. *Murgia*, *supra*, 427 U.S. at 313), but on factors directly related to their abilities "to participate in and contribute to society." *Mathews* v. *Lucas*, *supra*, 427 U.S. at 505. In addition, while institutionalized mental patients "may indeed make up a 'minority,' they are not so much the victims of social prejudice as of [mental] infirmity and social neglect. Moreover, concerned friends and relatives or organized interest groups may, and often do, step forward to protect the interests of" such patients. *O'Bannon* v. *Town Court Nursing Center*, *supra*, slip op. 11 n. 8 (Blackmun, J., concurring). In fact, the legislative history of the amendments to the Social Security Act that established the SSI program shows that several witnesses testified before the Senate Committee on Finance in support of extending Medicaid coverage to patients between 21 and 64 years of age in mental hospitals and in support of extending SSI benefits to all residents of public mental institutions. See *Social Security Amendments*

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[18] We note in this regard that appellee Welch was admitted to a public mental hospital in October 1973 and was released three months later, in January 1974 (J.A. 15).

of 1971: Hearings on H.R. 1 Before the Senate Comm. on Finance, 92d Cong., 1st & 2d Sess. 924–941, 2180, 2408–2415, 2479–2486, 3255–3258, 3318–3321 (1971–1972).[19]

Furthermore, as we have already observed (pages 19–23, *supra*), in establishing the SSI program Congress expressly recognized that mentally disabled individuals were in need of supplemental public assistance, and the exclusion of appellees from SSI benefits is based on factors other than their mental conditions. In sum, the statutory classification is not predicated on criteria that are, in a constitutional sense, "suspect." In order to satisfy the equal protection guarantee embodied in the Due Process Clause, the statute need only be shown to have some rational basis. See, *e.g.*, *Califano* v. *Aznavorian*, *supra*, 439 U.S. at 174–175; *Mathews* v. *De Castro*, *supra*, 429 U.S. at 185; *Weinberger* v. *Salfi*, *supra*, 422 U.S. at 770. As we show below (pages 26–32, *infra*), the classification in this case unquestionably meets the rational basis test.

C. THE CLASSIFICATION DRAWN IN SECTION 1611(e) IS RATIONALLY RELATED TO LEGITIMATE GOVERNMENTAL PURPOSES

1. Congress could rationally limit SSI payments to inmates of public institutions who are receiving Medicaid benefits

In enacting Section 1611(e), Congress intended generally to exclude SSI payments to otherwise eligible recipients who are inmates in a public institution and whose care thus is

[19] Indeed, the very benefits that appellees seek in this litigation have been extended by Congress to public mental hospital residents under 21 and 65 years of age or older. The failure of Congress to provide benefits to members of appellees' class thus cannot be attributed to "a history of purposeful unequal treatment" or "political powerlessness." *San Antonio School District* v. *Rodriguez*, *supra*, 411 U.S. at 28.

being paid for out of local or state government funds. The $25 monthly SSI payment to individuals in public institutions whose treatment is covered under the Medicaid program was meant to provide those individuals who receive federal financial assistance for the costs of their treatment with a small cash allowance for personal needs that are not within Medicaid. Appellees do not directly challenge the reasonableness of these congressional policy choices. Nor do they contend that Congress improperly excluded from coverage under Medicaid the treatment of persons between 21 and 64 years of age in mental institutions. Rather, appellees' argument boils down to the claim that it is somehow unfair to deny them SSI benefits just because their institutionalized treatment is not funded under Medicaid. But if it is a violation of equal protection principles to deny SSI benefits to appellees because they are not eligible for Medicaid, then presumably it is equally unconstitutional to deny SSI benefits to *any* otherwise eligible resident of a public institution who—for whatever reason—is not entitled to Medicaid benefits. Contrary to appellees' argument, however, Congress had a rational basis for its determination to provide SSI benefits (reduced to $25 per month) only to those public institution residents who are eligible for Medicaid.

Congress' decision to deny SSI benefits to certain public institution residents whose treatment is not funded through the Medicaid program, including individuals between 21 and 64 years of age in public mental hospitals, is rationally related to the legitimate legislative desire to avoid spending federal resources on behalf of individuals whose care and treatment are being fully provided for by state and local government units. Put another way, the statute may be said to implement a congressional policy choice to provide supplemental financial assistance for only those residents of public institu-

tions who already receive significant federal support in the form of Medicaid coverage.[20]

As we have noted above, the exclusion from Medicaid benefits of mental institution residents aged 21 to 64 is not directly challenged in this case. Nevertheless, because appellees do challenge their exclusion from SSI benefits, which in turn is based directly on their exclusion from the Medicaid program, we first examine the validity of the Medicaid eligibility scheme.

In 1950, Congress adopted a system of federal grants to the states for the operation of state programs to aid the permanently and totally disabled. The statute establishing the aid program specifically excluded payments on behalf of "any individual * * * who is a patient in an institution for * * * mental diseases." Social Security Amendments of 1950, ch. 809, 64 Stat. 558. When Congress adopted the Medicaid Act in 1965, Social Security Amendments of 1965, Pub. L. No. 89–97, 79 Stat. 286 *et seq.*, it retained the general exclusion of patients in institutions for treatment of mental illness. Section 1905(a)(1), (4), (15)(B), 79 Stat. 351–352. This exclusion was based on Congress' understanding that the long term care of patients in mental institutions "had traditionally been ac-

[20] In addition, by providing SSI benefits only to residents of Medicaid-funded public institutions, Section 1611(e) encourages SSI recipients to obtain treatment at public facilities that meet certain minimum standards. Cf. *O'Bannon* v. *Town Court Nursing Center*, *supra*, slip op. 12–14. Because some residents of public mental institutions may not have a choice of facilities at which they are to receive treatment (see note 17, *supra*), we do not press this additional legislative goal as a basis for upholding the statute in the context of this case. We note, however, that the mere fact that the statute serves additional legitimate purposes does not detract from the legitimacy of the reasons we urge here in support of the statutory classification. See *McGinnis* v. *Royster*, 410 U.S. 263, 274–277 (1973); *Mathews* v. *Lucas*, *supra*, 427 U.S. at 509 n.15.

cepted as a responsibility of the States." S. Rep. No. 404, 89th Cong., 1st Sess. 144 (1965); see *id.* at 146; H.R. Rep. No. 213, 89th Cong., 1st Sess. 126, 128 (1965). At the same time, however, Congress did provide Medicaid coverage to the needy aged in mental institutions (Section 1905(a)(14), 79 Stat. 352), in recognition of the severe health cost problems of persons over 65 years of age. See S. Rep. No. 404, *supra*, at 277 (supplemental views).[21]

In 1972, Congress further broadened the class of mental patients eligible for Medicaid by providing for the eligibility of children. Social Security Amendments of 1972, Pub. L. No. 92–603, Section 299B(a), (b), 86 Stat. 1460–1461. The 1972 amendments extended Medicaid coverage to persons under age 21 who are inpatients in psychiatric hospitals, provided that the treatment is certified as being likely to improve the patient's condition. In providing for this expansion of coverage, Congress expressed its belief that "the nation cannot make a more compassionate or better investment in medicaid than this effort to restore mentally ill children to a point where they may very well be capable of rejoining and contributing to society as active and constructive citizens." S. Rep. No. 92–1230, *supra*, at 281. See 118 Cong. Rec. 36915 (1972) (remarks of Rep. Mills).

As the district court concluded in *Legion* v. *Richardson*, *supra*, the general exclusion from Medicaid coverage of persons in mental institutions reflects Congress' reasonable belief that the care of the mentally ill in mental hospitals is

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[21] Medicaid coverage was also provided for the treatment of the mentally ill in general care facilities, including nursing homes and medical hospitals. Section 1905(a) (1), (4), 79 Stat. 351. In providing this assistance, Congress sought to encourage alternative forms of treatment for the mentally ill outside the traditional setting of the mental institution. S. Rep. No. 404, *supra*, at 144–147.

properly the responsibility of the states. 352 F. Supp. at 459. Insofar as the Medicaid program classifies on the basis of age, by extending coverage to children and the aged in mental institutions while excluding those between 21 and 64 years of age, that age-based classification was correctly upheld in *Kantrowitz* v. *Weinberger,* 388 F. Supp. 1127 (D.D.C. 1974), aff'd, 530 F. 2d 1034 (D.C. Cir.), cert. denied, 429 U.S. 819 (1976), where the district court held that in view of the enormous expense involved in supplementing traditional state aid to the mentally ill, Congress could rationally decide to extend Medicaid coverage one step at a time to those perceived as most in need of assistance. 388 F. Supp. at 1131. See *Califano* v. *Jobst,* 434 U.S. 47, 57 (1977); *Jefferson* v. *Hackney,* 406 U.S. 535, 546 (1972).

By incorporating the Medicaid eligibility scheme into Section 1611(e), Congress simply drew the line in providing SSI payments to residents of public institutions at those for whom the federal government had already assumed partial financial responsibility, while leaving to the states and local governments the duty of providing for the needs of all other public institution residents. "Congress could rationally conclude that [these] need[s] should continue to be met primarily by the States * * *." *Richardson* v. *Belcher,* 404 U.S. 78, 84 (1971).

Appellees contend (Motion to Affirm 12–13), however, that, unlike Medicaid, SSI is a wholly federal program through which "Congress essentially preempted the field of income maintenance for the aged, blind and disabled, including those residing in public and private medical institutions." But while it is true that Congress in enacting Title XVI intended to create "a single Federal program * * * with uniform Federal benefits and uniform eligibility requirements" (118 Cong. Rec. 36916 (1972) (remarks of Rep. Mills)), the fact remains that the SSI program is not unlimited in scope and was not meant to

displace the states completely in the provision of public assistance to the aged, blind and disabled. See 118 Cong. Rec. 32898 (1972) (remarks of Sen. Long) ("This is a program * * * which I think will, *in large measure,* replace present State programs * * *"; emphasis added). SSI is dotted with exceptions, the most significant of which is the exclusion of residents (including prison inmates) in state-run institutions.[22] As the court remarked in *Baur* v. *Mathews,* 578 F.2d 228, 233 (9th Cir. 1978):

> Undoubtedly the new federal program was intended to make uniform the eligibility requirements and the benefits under the federal supplemental social insurance program. The federal government has assumed a major portion of the responsibility of providing for those whose earnings fall below specified levels. Yet Congress did not determine to displace the existing state programs for assisting the needy aged, blind or disabled. Considerations of economic efficiency as well as respect for the state's traditionally local responsibility to care for its citizens seemed to motivate the exception from benefits of persons already receiving treatment at state or local institutions.

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[22] See also, *e.g.*, 42 U.S.C. 1382(e)(3)(A)–(B) (excluding drug addicts and alcoholics from SSI benefits unless they are receiving appropriate treatment at an approved institution and are complying with the terms of such treatment); 42 U.S.C. 1382(f) (excluding individuals who have spent one full month or more outside the United States). The constitutionality of the latter provision was upheld by this Court in *Califano* v. *Aznavorian, supra.* We note that the public institution exclusion in Section 1611(e) and the mental institution exclusion incorporated into Section 1611(e) from the Medicaid statute were essentially carried over, with some modifications that enlarged the class of eligible recipients, from the prior statutory scheme that had provided for cooperative federal-state assistance programs for the aged, blind and disabled. See 42 U.S.C. (1964 ed.) 306 (a), (b); 42 U.S.C. (1970 ed.) 1206; 42 U.S.C. (1970 ed.) 1355; 42 U.S.C. (1964 ed.) 1385 (a)(I), (b)(12)(A).

Appellees also contend (Motion to Affirm 13–17) that members of their class have the same, if not a greater, need for the monthly $25 SSI allowance than do other institutionalized indigents who receive the allowance because their treatment is covered by Medicaid. The same could be said about all other persons who would qualify for SSI benefits but for the fact that they are inmates in non-Medicaid institutions. But the statutory classification does not exclude non-Medicaid recipients because they were thought to be less needy; indeed, if those individuals were in a different type of institution where the costs of their treatment were paid out of Medicaid funds they would be eligible for SSI benefits. Congress certainly may consider factors other than need in deciding how to distribute public assistance benefits. See *Harris* v. *McRae, supra.*

Even if the line drawn by Congress in Section 1611(e) is not perfect, "it is nevertheless the rule that in a case like this 'perfection is by no means required.' " *Vance* v. *Bradley, supra,* 440 U.S. at 108, quoting from *Phillips Chemical Co.* v. *Dumas School District,* 361 U.S. 376, 385 (1960). See *New York Transit Authority* v. *Beazer, supra,* 440 U.S. at 592 n.39; *Califano* v. *Aznavorian, supra,* 439 U.S. at 175; *Dandridge* v. *Williams, supra,* 397 U.S. at 485. Congress could reasonably determine to achieve the goal of providing a personal needs allowance under SSI for all indigent residents of public institutions by first providing such an allowance to those public institution residents whose institutional expenses were already being funded by the federal government. General rules of this sort are constitutional "even though such rules inevitably produce seemingly arbitrary consequences in some individual cases." *Califano* v. *Jobst, supra,* 434 U.S. at 53.

2. The statutory classification is not the product of congressional inadvertence

A major concern underlying the district court's decision was the belief that the statute may have been "an accidental byproduct of the legislative scheme rather than an intended means of achieving a calculated legislative objective" (J.S. App. 17a). Appellees similarly assert that Congress failed "not only to give a reason for excluding appellees from the SSI program, but also to give any indication that it wanted to exclude, or understood that it was excluding, appellees" (Motion to Affirm 7, 11, 19–20).

The fact that Congress did not articulate any particular rationale for the classification is, of course, of no significance in assessing the constitutionality of the statute, since "[a] statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan* v. *Maryland*, 366 U.S. 420, 426 (1961). See *Vance* v. *Bradley*, *supra*, 440 U.S. at 111; *Dandridge* v. *Williams*, *supra*, 397 U.S. at 485. Nonetheless, the legislative record convincingly establishes that the statutory classification is not an "historical accident" (*Illinois State Bd. of Elections* v. *Socialist Workers Party*, 440 U.S. 173, 187 (1979)), but rather is "the considered product of a legislature." *Id.* at 191 (Rehnquist, J., concurring).

The reports of both the Senate and House committees specifically state that the $25 SSI personal needs allowance would be provided to "[p]eople who are residents of *certain* public institutions, or hospitals or nursing homes *which are getting Medicaid funds* * * *." S. Rep. No. 92–1230, *supra*, at 386; H.R. Rep. No. 92–231, *supra*, at 150; see also 117 Cong.

Rec. 21103 (1971) (remarks of Rep. Mills). By negative implication this language plainly betokens an intent that residents of some public institutions that are not receiving Medicaid funds would not be eligible for the SSI allowance.

In addition, it is significant that the SSI program was created by Congress as part of a comprehensive effort to amend the Social Security Act. See 118 Cong. Rec. 32470 (1972) (remarks of Sen. Long). In the same bill that provided for the SSI program in Title XVI of the Act, Congress enacted numerous amendments to Title XIX (the Medicaid program), including the provision (42 U.S.C. 1396d(a)(16), (h)) that extended Medicaid coverage to inpatient psychiatric hospital services for persons under age 21. Section 299 (B)(a), (b), 86 Stat. 1460–1461. See H.R. Conf. Rep. No. 92–1605, 92d Cong., 2d Sess. 65 (1972); S. Rep. No. 92–1230, *supra,* at 280–281; 118 Cong. Rec. 36915 (1972) (remarks of Rep. Mills); 118 Cong. Rec. 32472–32473 (1972) (remarks of Sen. Long). At the same time, a Senate proposal to authorize demonstration projects for the purpose of evaluating the feasibility of extending Medicaid coverage to persons between the ages of 21 and 64 in mental hospitals (see S. Rep. No. 92–1230, *supra,* at 281) was rejected in conference. See H.R. Conf. Rep. No. 92–1605, *supra,* at 65; 118 Cong. Rec. 36519 (1972) (remarks of Rep. Mills).

Thus, there can be little doubt that, when it established the SSI program providing for the exclusion of public institution residents whose treatment was not covered by Medicaid, Congress was well aware that individuals aged 21 to 64 in public mental hospitals were not eligible for Medicaid and therefore would not be entitled to receive reduced SSI benefits. Indeed, in the course of the lengthy hearings before the Senate Committee on Finance, several witnesses specifically

pointed out that one effect of the proposed Section 1611(e) would be to deny SSI payments to residents of public mental institutions. See *Senate Hearings, supra,* at 2180, 3257, 3319.

Appellees (Motion to Affirm 7–8, 20) and the district court (J.S. App. 16a) both emphasize that in the committee reports explaining the classification in Section 1611(e) the only individuals whom Congress specifically expressed an intent to exclude from SSI benefits were inmates in penal institutions. See S. Rep. No. 92–1230, *supra,* at 386; H.R. Rep. No. 213, *supra,* at 150. But if Congress had simply meant to preclude prison inmates from participating in the SSI program, it could have achieved that purpose in a much more direct manner, without incorporating the Medicaid eligibility scheme into Section 1611(e) at all. See *Barrett* v. *United States,* 423 U.S. 212, 217 (1976). In short, "Congress was aware of what it was doing, and the legislative history does not demonstrate that the plain language [of Section 1611(e)] was not intended." *Maine* v. *Thiboutot,* No. 79–838 (June 25, 1980), slip op. 6.

Section 1611(e) should be upheld as a rational exercise of congressional power in the social welfare area. Appellees' attempt to draw the Court into second-guessing Congress' judgment must fail because the question here is not whether the statutory classification embodies wise policy. As the Court recently remarked, "we cannot, in the name of the Constitution, overturn duly enacted statutes simply 'because they may be unwise, improvident, or out of harmony with a particular school of thought.'" *Harris* v. *McRae, supra,* slip op. 26, quoting *Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 488 (1955). "The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process."

Vance v. *Bradley, supra,* 440 U.S. at 97. See *Personnel Adm'r of Massachusetts* v. *Feeney, supra,* 442 U.S. at 272.[23]

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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[23] See *Maine* v. *Thiboutot, supra,* slip op. 6–7 (footnote omitted) (appellees' "arguments amount to the claim that had Congress been more careful, and had it fully thought out the relationship among the various sections, it might have acted differently. That argument, however, can best be addressed to Congress * * *"). See also *Delaware Tribal Business Comm.* v. *Weeks,* 430 U.S. 73, 90 (1977).

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